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SUPREME COURT, U.S.

NO. 82-5280

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ROBERT WILLIAM STRICKLAND,

Petitioner,

v.

WALTER D. ZANT,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF BUTTS COUNTY

BRIEF IN OPPOSITION FOR THE RESPONDENT

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QUESTION PRESENTED

1.

Whether the trial court's instructions to the jury at the guilt/innocence phase of Petitioner's trial created an improper presumption and shifted the burden of proof of intent from the State.

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PART ONE

STATEMENT OF THE CASE

Petitioner, Robert William Strickland, was indicted in Hall County, Georgia, for the murders of Eddie Lee Carroll, Lester Lee Carroll and Bonnie Mae Carroll and for aggravated assaults upon Junie Irene Carroll, Elizabeth June Carroll and Cecil Carroll. At Petitioner's trial in 1980, Petitioner was tried by a jury and found guilty of all offenses. Petitioner

was sentenced to death for each of the three murders and to consecutive ten year sentences for the three aggravated assaults. The death penalties were imposed upon a finding of Ga. Code Ann. § 27-2534.1(b)(2) in two of the murders and Ga. Code Ann. § 27-2534.1(b)(7) in one of the murders.

On direct appeal to the Georgia Supreme Court, Petitioner's convictions were confirmed. Strickland v. State, 247 Ga. 219, 275 S.E.2d 29 (1981). Thereafter, on March 30, 1981, Petitioner's Motion for a Rehearing was denied.

On October 5, 1981, this Court denied Petitioner's petition for a writ of certiorari, and on November 30, 1981, this Court denied Petitioner's petition for rehearing.

A petition for a writ of habeas corpus was filed in the Butts County Superior Court and a hearing was held on February 16, 1982. By Order dated April 2, 1982, the Butts County Superior Court denied state habeas relief. The Georgia Supreme Court denied Petitioner's Application for a Certificate of Probable Cause to Appeal on May 25, 1982. Thereafter, Petitioner filed this second petition for a writ of certiorari.

The facts which gave rise to Petitioner's convictions are succintly set forth in Strickland v. State, supra, and because the underlying facts of Petitioner's conviction have no direct bearing upon the legal issues presented on this application for a writ of certiorari, they will not be repeated herein.

PART TWO

REASON FOR NOT GRANTING THE WRIT

ARGUMENT AND CITATION OF AUTHORITY

I. THE TRIAL COURT'S CHARGE ON INTENT WAS NOT IMPERMISSIBLY BURDEN-SHIFTING.

Petitioner alleges that the trial court's charge to the jury during the guilt/innocence phase of Petitioner's trial created an unconstitutional presumption and shifted the burden of proof from the State to the Petitioner.

The charge about which Petitioner complains was given as follows:

> Now, a crime, under the laws of our State, is a violation of the statute or statutes of this State in which there is a union or joint operation of both intention to commit the crime and some act done in furtherance of that intention.
>
> I charge you that every person is presumed to be of sound mind and discretion, but that this presumption may be rebutted. I charge you that you may infer that the acts of a person of sound mind and discretion are the product of his will, and you may infer that a person of sound mind and discretion intends the natural and probable consequences

of his act. Now, whether or not you make any such inference is a matter solely within the discretion of the jury.

(Trial Transcript, Vol. V; p. 1097).

Petitioner contends that these instructions placed upon him the burden of proof on the element of intent and thus violated the principles set forth in Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450 (1978). In Sandstrom v. Montana, supra, et seq. at 514, citing Ulster County Court v. Allen, 442 U.S. 140 (1979), the United States Supreme Court stated that the threshold inquiry in ascertaining the constitutional analysis applicable to this kind of jury instruction is to determine the nature of the presumption it describes. The Supreme Court in Ulster County Court distinguished between permissive presumptions or inferences and mandatory presumptions, noting that a permissive presumption or inference "allows but does not require the trier of fact to infer the elemental fact from proof by the prosecutor of the basic one . . . and places no burden of any kind on the defendant." Ulster County Court, supra, 157. On the other hand, mandatory presumptions tell "the trier of fact that he or they must find the elemental fact upon proof of the basic fact, at least unless the defendant has come forward with some evidence to rebut the presumed connection

between the two facts." Id., at 157.

Respondent submits that the instructions in the instant case are neither conclusive nor burden-shifting. The charge allows, but does not require, the jury to infer or presume certain facts once the State has proven other basic facts. The Court in very clear language informed the jury that this presumption was rebuttable. The Court went on to charge that criminal intention would not be presumed, and of course, the jury was clearly instructed that the burden of proof was on the State to prove intent as an essential element of the crime.

As the charge merely creates a permissive presumption, Petitioner must demonstrate that the instruction is invalid as it applies to him. He must show that there is no rational way a trier of fact can make the particular connection allowed by the inference. Ulster County Court, supra, at 157. As no such showing has been made in the instant case, the charge was clearly correct as applied to Petitioner.

Respondent asserts that when the charge is considered as a whole, as is required by Cupp v. Naughten, 414 U.S. 141 (1973), reasonable jurors would not have interpreted the presumption as being conclusive or as shifting the burden of persuasion to the Petitioner. Respondent submits that the trial court's instructions clearly created only, at the most, a permissive inference similar to the charge considered by the Court in the Ulster County Court, supra.

CONCLUSION

For all of the above and foregoing reasons, Respondent respectfully requests this Court to deny Petitioner's request for a writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon to:

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This 24th day of September, 1982.

Virginia H. Jeffries
VIRGINIA H. JEFFRIES